

CONTRACT FOR ENGINEERING SERVICES

The following agreement between the SEWER AUTHORITY MID-COASTSIDE, hereinafter referred to as "AGENCY" and MID-COASTSIDE AREA CONSULTANTS, a joint venture of engineers made up of TROTTER-YODER & ASSOCIATES/BARRETT & ASSOCIATES, 3730 Mt. Diablo Boulevard, Lafayette, California 94549 and RESOURCES ENGINEERING & MANAGEMENT, 343 El Camino Real, South San Francisco, California 94080, hereinafter referred to as "ENGINEER."

WITNESSETH:

WHEREAS, ENGINEER are duly qualified engineering firms, experienced in preparing project reports, preliminary engineering designs, construction plans and specifications, estimating costs and all matters in connection with construction of wastewater treatment, collection and disposal facilities, and has offered its services to AGENCY for the purposes specified in this Agreement; and

WHEREAS, in the judgment of the Board of Directors of said AGENCY it is necessary and advisable to employ the services of said ENGINEER for purposes in connection with its proposed construction of regional intertie sewers, wastewater treatment and disposal facilities.

WHEREAS, AGENCY has applied for grant assistance to the E.P.A. in the matter of planning, design and construction of a regional treatment system.

WHEREAS, AGENCY has completed major elements of the STEP 1 requirements of the Grants program and is desirous of completing STEP 1 - Facilities Planning, STEP 2 - Preparation of Drawings and Specifications and STEP 3 - Construction of the Wastewater Treatment System.

NOW THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

When authorized, the ENGINEER agrees to perform the following professional engineering services in connection with the above project which will be paid for by the AGENCY as indicated in ARTICLE II - COMPENSATION FOR SERVICES.

Specific authorization will be required in writing from the AGENCY prior to the start of work on the separate phases of the project as described in ARTICLE II - COMPENSATION FOR SERVICES.

ARTICLE I - SERVICES TO BE PROVIDED

A. Phases of the Work

Engineering services shall be provided in six phases. They are:

- PHASE I, Preliminary Design,
- PHASE II, Design - Plans and Specifications,
- PHASE III, Preparation of Operation and Maintenance Manual,
- PHASE IV, Construction Administration,
- PHASE V, Construction Inspection,
- PHASE VI, Additional Services.

B. PHASE I, Preliminary Design (Portion of STEP 1 - Grant Program)

Work included in this phase shall be sufficient to document the details of the projects to be constructed. Services will include the following:

- (1) Work items.
 - (a) Final intertie pipeline route alignment and profile.
 - (b) Plant layout and treatment schematic drawings.
 - (c) Hydraulic profiles.
 - (d) Final design criteria.
 - (e) Architectural rendering of the proposed treatment plant units.
 - (f) Outline specifications.
 - (g) Preliminary construction cost estimates.
- (2) Attend detailed conferences with the AGENCY staff for preliminary design review.
- (3) Plan and assist in obtaining the required surveys and other field investigations for the project design to proceed.
- (4) Prepare detailed drawing list, schedule of working drawings and specifications, lump sum budget for completion of PHASE II, Design - Plans and Specifications.
- (5) Provide those PHASE VI, Additional Services as separately authorized the AGENCY.

At the completion of PHASE I, a meeting will be held with the AGENCY staff for approval of the preliminary design. Prior to the start of PHASE II, Design - Plans

and Specifications, any changes or modifications agreed to by the preliminary design review will be incorporated into the project scope.

C. PHASE II, Design - Plans and Specifications (STEP 2 - Grants Program)

At the completion of PHASE I, Preliminary Design, upon written notice to proceed in writing, ENGINEER shall provide the following services:

- (1) Prepare detailed plans and specifications for construction of wastewater facilities, and related contract documents for receiving competitive bids.
- (2) Attend detailed conferences with AGENCY at critical phases of the work.
- (3) Prepare detailed estimates of quantities and construction costs.
- (4) Furnish five (5) full-size sets of reproductions of contract drawings, specifications and related contract documents for approval by the AGENCY and approving authorities.

D. PHASE III, Preparation of Operation and Maintenance Manual (Portion of STEP 2 - Grants Program)

At the time PHASE II, Design - Plans and Specifications is authorized to proceed, the AGENCY shall authorize the preparation of an Operation and Maintenance Manual and the ENGINEER shall provide the following services:

- (1) Attend meetings with the AGENCY and operating staff for planning the work.
- (2) Prepare detailed outline of the Operation and Maintenance Manual.
- (3) Prepare preliminary draft of Operation and Maintenance Manual.
- (4) Submit Operation and Maintenance Manual to regulatory agencies and respond to questions raised by their review.

- (5) Modify Operation and Maintenance Manual to incorporate "AS-BUILT" conditions of construction.
- (6) Develop and conduct operator training session in use of the Operation and Maintenance Manual.
- (7) Prepare final Operation and Maintenance Manual at completion of all construction and acceptance by the AGENCY.

E. PHASE IV, Construction Administration (STEP 3 - Grants Program)

The following services of construction administration will be provided by the ENGINEER:

- (1) Attend meetings, provide information on plans and specifications review by grant funding agencies.
- (2) Preparation and distribution of plans, specifications and addenda to the contract documents to prospective bidders on the project.
- (3) Assist in securing bids for the project.
- (4) Meeting with contractor's representatives on the site prior to bid opening.
- (5) Attend bid opening, tabulate bids and provide recommendations for award of contract.
- (6) Assist in scheduling and conducting pre-construction conference with successful contractor.
- (7) Review of shop and working drawings of fabricated and manufactured equipment submitted by contractors for substantial conformity with the intent of the contract plans and specifications.

- (8) Interpretation of the plans and specifications, including the preparation of elementary sketches, if required, to clarify design details, and resolve actual field conditions encountered if in conflict with plans.
- (9) Visits by office personnel to the site of the work on an average of one visit per month, and provide monthly reports regarding the progress of the work and a review of all change orders.
- (10) Process change orders when required, for approval by the AGENCY.
- (11) Review of construction progress estimates and recommendations for progress and final payments to contractors.
- (12) Assistance in final inspection and testing, and report on the project for conformance with the design concept and compliance with the contract documents.
- (13) Observe initial operation of the project and all performance tests required by the specifications.
- (14) Provide those PHASE VI, Additional Services as separately authorized by the AGENCY.

F. PHASE V, Construction Inspection

The following Field Engineering Services will be provided by the ENGINEER:

- (1) Mill and shop inspection of manufactured and fabricated items.
- (2) Visits by office personnel to the site of the work in addition to those described in PHASE IV, Item 9, when such additional visits have been agreed upon by the parties to the contract as being necessary or desirable.

- (3) Technical inspection of construction by a full-time resident engineer and supporting staff, as required, who will:
- (a) Observe and approve the work performed to ascertain its conformity with the contract drawings and specifications and observe initial operation of the project, or performance test, as required by specifications.
 - (b) Assist in field tests where necessary and approval all construction materials, review off-site inspection and testing as performed by others.
 - (c) Review and approve all quantities of materials in place for interim and final payments.
 - (d) Prepare change orders and review properly filed claims of the Contractor for extra compensation.
 - (e) Maintain at the job site orderly files for correspondence, reports of job conferences, shop drawings and other submissions, reproduction of original contract documents including all addenda, change orders, and additional drawings issued subsequent to the award of the contract, the ENGINEER'S interpretation of the contract documents, progress reports, and other project related documents.
 - (f) Keep a diary or log book, recording hours on the job site, weather conditions, list of visiting officials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures.

- (g) Furnish periodic reports, as required, of progress of the project and the Contractor's compliance with the approved construction schedule.
- (h) Review applications for payment with the Contractor for compliance with the established procedure for their submission and forward them with comments to ENGINEER for review, approval and forwarding to AGENCY, noting particularly their relation to the work completed and materials and equipment delivered at the site.
- (i) Assemble guarantees, certificates, maintenance operation data, and other required data to be furnished by the Contractor and upon acceptance of the project, deliver this material to the ENGINEER for his approval and forward to the AGENCY.
- (j) Prior to final inspection, submit to the Contractor a list of observed items regarding correction and verify that each correction has been made.
- (k) Conduct final inspection in the company of the ENGINEER and AGENCY representative and prepare a final list of items to be corrected.
- (l) Verify that all items on the final list have been corrected or conduct follow-up work as required to obtain the correction of all deficiencies and make recommendations to the ENGINEER concerning acceptance.

G. PHASE VI, Additional Services

Additional Services may be required during any of the separate phases of the work. When authorized, the following Additional Services will be provided:

- (1) Preparation of changes to the approved plans and specifications beyond the mere clarification of design details included in PHASE IV, Item 8.
- (2) Design to provide for alternative bid items.
- (3) Work resulting from changes in plans or specifications made at the direction of the AGENCY after acceptance of the preliminary design.*
- (4) Administrative work related to the preparation of applications and supporting documents to state and federal grant funding requirements of the project.
- (5) Attend state, federal or other regulatory agency meetings to represent the items on project related matters, such as discharge requirements, environmental concerns or project funding.
- (6) Evaluation of substituted items of equipment proposed by the Contractor, for compliance with contract documents.
- (7) Meetings and negotiations with the Contractor involving changes in the extent or amount of the contract, or changes in the approved design.
- (8) Additional work resulting from the delinquency or involvency of one or more of the contractors; or as a result of damage to the construction project caused by fire, flood earthquake or other Acts of God.
- (9) Additional work resulting from strikes, walkouts, or other acts of trade or labor unions.

- (10) Plan and assist in securing the services of outside consultants for soils and surveys in addition to those required in PHASE I, Preliminary Design.
- (11) Assistance in negotiations for land and rights of way.
- (12) Appearance before courts or boards on behalf of AGENCY on matters of litigation related to the project.
- (13) Additional services in connection with the project not otherwise provided for in this Agreement.

ARTICLE II - COMPENSATION FOR SERVICES

A. Authorization Required:

Before starting on any of the six phases of work, the ENGINEER will provide a work plan and estimated cost of the work to the AGENCY. When approved, the AGENCY will issue in writing, an authorization to proceed with the work.

B. Basis of Payment for Engineering Services:

- (1) Two methods of payment will be used for the various phases of work undertaken during the course of the project. They are:

Fixed Lump-Sum Payment method

Cost-Plus-a-Fixed Payment method

For either method, services will be billed monthly to the AGENCY.

Payment will be due within 30 days of the date of the monthly statement.

- (2) Fixed Lump Sum Payment Method. This method of payment will be used only when the scope of the assigned work is clearly and fully defined. The lump-sum amount agreed to is the full compensation for services to complete the work, unless the scope of work or time to complete the work is changed by the AGENCY, or its representative, in writing.
- (3) Cost-Plus-a-Fixed Payment Method. This method of payment will be used for those phases or separate items of work where the full and complete scope of work cannot accurately be determined. When work under this payment method is authorized, the ENGINEER will prepare a work plan and detailed budget estimated which will include a breakdown of all of the ENGINEER'S costs related to the work and the amount of a fixed payment representing contingencies, interest on invested capital, readiness to serve and profit.

If the work contemplated is completed with less effort than originally estimated, the ENGINEER will be reimbursed for his actual costs of the work, plus the fixed payment for the work. If the work contemplated required more effort than originally estimated, the ENGINEER will be reimbursed for all the actual costs of the work, but will not be allowed an increase in the fixed payment portion originally estimated.

An adjustment in the fixed payment may be requested by the ENGINEER and authorized by the AGENCY if the physical scope of the work, time for completion, or if services required are materially increased over that contemplated in the original estimate.

C. Payment Basis for Specific Phases of the Work:

The payment basis for each phase of the work shall be negotiated at the time the work is authorized. The following shall serve as a guide:

PHASE I - Preliminary Design, PHASE IV - Construction Administration,
PHASE V - Construction Inspection and PHASE VI - Additional Services
shall be completed on a Cost-Plus-a-Fixed Payment method.

PHASE II - Design - Plans and Specifications and PHASE III - Preparation
of Operation and Maintenance Manual shall be completed on a Lump-Sum
Payment method.

ARTICLE III - TIME FOR COMPLETION

Work on the separate phases of the project shall commence immediately upon "Notice to Proceed" by the AGENCY.

Prior to the "Notice to Proceed," a detailed schedule will be prepared setting forth the time of completion. Any changes required in the time of completion for the work shall be requested in writing by the ENGINEER to the AGENCY.

ARTICLE IV - MISCELLANEOUS PROVISIONS

A. E.P.A. Procurement Regulations:

This entire agreement is subject to rules and regulations contained in 40 CFR 35.936, 35.937 and 35.939. The AGENCY and the ENGINEER agree that anything contained herein that may be ruled in conflict with the provision of "EXHIBIT A," titled Appendix C-1, Required Provisions - Consulting

Engineering Agreement, shall be superceded by those provisions. The AGENCY and the ENGINEER agree that "EXHIBIT A" is made a part of this Agreement.

B. Title:

It is understood and agreed that originals of all calculations, drawings, and other documents developed for the project will remain the property of the ENGINEER. However, copies of all documents and reproducible mylar plans will be provided to the AGENCY upon request and may be used as their property solely at AGENCY'S discretion. Reproduction costs will be paid for by the AGENCY at cost plus fifteen percent (15%).

C. Successors and Assigns:

All of the terms, conditions and provisions hereof shall inure to the benefit of, and be binding upon, the parties hereto, and their respective successors and assigns; provided, however, that no assignment of the contract shall be made without consent of the parties to the Agreement.

D. Termination or Abandonment and Payment for Partial Project:

See "EXHIBIT A", Section 5, TERMINATION.

E. Interest Costs:

In order to defray interest costs by the ENGINEER resulting from delayed payments by the AGENCY, simple interest at the rate of seven percent (7%) per annum shall be added to the unpaid balance of each invoice. The interest period shall commence sixty (60) days after date of original statement and shall terminate

upon date of payment. Partial payments will first be credited to interest and then principal. No interest charge will be added during the initial 60-day period following date of invoice.

F. Delays in the Work:

Before starting on separate phases or items of work, the ENGINEER will prepare a detailed budget and time schedule of completion.

Should delays occur in the start of the work beyond ninety (90) calendar days, or in the completion of the work for any period of time through no fault of the ENGINEER, the ENGINEER shall increase his anticipated total compensation for the work by the rate of seven percent (7%) per annum.

G. Payment Address:

All payments due the ENGINEER shall be paid to MID-COASTSIDE AREA CONSULTANTS, c/o Trotter-Yoder & Associates, 3730 Mt. Diablo Boulevard, Lafayette, California 94549.

IN WITNESS WHEREOF, AGENCY has caused its name to be affixed hereto by the Chairman of its Board of Directors, attested by the Secretary, and ENGINEER has hereunto subscribed its name by its officers thereunto duly authorized this

28TH day of APRIL, 1976.


ENGINEER:

MID-COASTSIDE AREA CONSULTANTS

For TYA/Barrett:

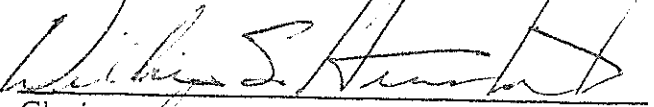


For Resources Engineering & Management

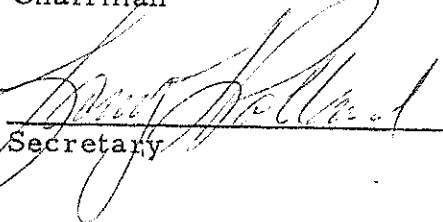


AGENCY:

SEWER AUTHORITY MID-COASTSIDE



Chairman



Secretary

APPENDIX C-1
REQUIRED PROVISIONS -
CONSULTING ENGINEERING AGREEMENTS

1. General
2. Responsibility of the Engineer
3. Scope of Work
4. Changes
5. Termination
6. Remedies

7. Payment
8. Project Design
9. Audit; Access to Records
10. Price Reduction for Defective Cost or Pricing Data
11. Subcontracts
12. Labor Standards
13. Equal Employment Opportunity
14. Utilization of Small or Minority Business
15. Covenant Against Contingent Fees
16. Gratuities
17. Patents
18. Copyrights and Rights in Data

1. GENERAL

(a) The Owner and the Engineer agree that the following provisions shall apply to the work to be performed under this agreement and that such provisions shall supersede any conflicting provisions of this agreement.

(b) This agreement is funded in part by a grant from the U.S. Environmental Protection Agency. Neither the United States nor the U.S. Environmental Protection Agency (hereinafter, "EPA") is a party to this agreement. This agreement is subject to regulations contained in 40 CFR 35.936, 35.937, and 35.939.

2. RESPONSIBILITY OF THE ENGINEER

(a) The Engineer shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports, and other services furnished by the Engineer under this agreement. The Engineer shall, without additional compensation, correct or revise any errors or deficiencies in his designs, drawings, specifications, reports and other services.

(b) The Engineer shall perform such professional services as may be necessary to accomplish the work required to be performed under this agreement, in accordance with this agreement and applicable EPA requirements.

(c) Approval by the Owner or EPA of drawings, designs, specifications, reports, and incidental engineering work or materials furnished hereunder shall not in any way relieve the Engineer of responsibility for the technical adequacy of the work. Neither the Owner's nor EPA's review, approval or acceptance of, nor payment for, any of the services shall be construed to operate as a waiver of any rights under this agreement or of any cause of action arising out of the performance of this agreement, and the Engineer shall be and remain liable in accordance with applicable law for all damages to the Owner or EPA caused by the Engineer's negligent performance of any of the services furnished under this agreement.

(d) The rights and remedies of the Owner provided for under this agreement are in addition to any other rights and remedies provided by law.

3. SCOPE OF WORK

Except as may be otherwise specifically limited in this agreement, the services to be rendered by the Engineer shall include all services required to complete the task or step in accordance with applicable EPA regulations (40 CFR Part 35, Subpart E).

4. CHANGES

(a) The Owner may, at any time, by written order, make changes within the general scope of this agreement in the services or work to be performed. If such changes cause an increase or decrease in the Engineer's cost of, or time required for, performance of any services under this agreement, whether or not changed by any order, an equitable adjustment shall be made and this agreement shall be modified in writing accordingly. Any claim of the Engineer for adjustment under this clause must be asserted in writing within 30 days from the date of receipt by the Engineer of the notification of change, unless the Owner grants a further period of time before the date of final payment under this agreement.

(b) No services for which an additional compensation will be charged by the Engineer shall be furnished without the written authorization of the Owner.

5. TERMINATION

(a) This agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this agreement through no fault of the terminating party: Provided, that no such termination may be effected unless the other party is given (1) not less than ten (10) days written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party prior to termination.

(b) This agreement may be terminated in whole or in part in writing by the Owner for its convenience. Provided, that no such termination may be effected unless the Engineer is given (1) not less than ten (10) days written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party prior to termination.

(c) If termination for default is effected by the Owner, an equitable adjustment in the price provided for in this agreement shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the Engineer at the time of termination may be adjusted to the extent of any additional costs occasioned to the Owner by reason of the Engineer's default. If termination for default is effected by the Engineer, or if termination for convenience is effected by the Owner, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the Engineer for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs

reasonably incurred by the Engineer relating to commitments which had become firm prior to the termination.

(d) Upon receipt of a termination action pursuant to paragraphs (a) or (b) above, the Engineer shall (1) promptly discontinue all services affected (unless the notice directs otherwise), and (2) deliver or otherwise make available to the Owner all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Engineer in performing this agreement, whether completed or in process.

(e) Upon termination pursuant to paragraphs (a) or (b) above, the Owner may take over the work and prosecute the same to completion by agreement with another party or otherwise.

(f) If, after termination for failure of the Engineer to fulfill contractual obligations, it is determined that the Engineer had not so failed, the termination shall be deemed to have been effected for the convenience of the Owner. In such event, adjustment of the price provided for in this agreement shall be made as provided in paragraph (c) of this clause.

(g) The rights and remedies of the Owner and the Engineer provided in this clause are in addition to any other rights and remedies provided by law or under this agreement.

6. REMEDIES

(a) Except as may be otherwise provided in this agreement, or as the parties hereto may otherwise agree, all claims, counter-claims, disputes and other matters in question between the Owner and the Engineer arising out of, or relating to, this agreement or the breach thereof will be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, subject to the limitations stated in paragraphs (c) and (d) below. This agreement and any other agreement or consent to arbitrate entered into in accordance therewith as provided below, will be specifically enforceable under the prevailing law of any court having jurisdiction.

(b) Notice of demand for arbitration must be filed in writing with the other party to this agreement, with the EPA Regional Administrator and with the American Arbitration Association. The demand must be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event may the demand for arbitration be made after the time when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

(c) All demands for arbitration and all answering statements thereto which include any monetary claim must contain a statement that the total sum or value in controversy as alleged by the party making such demand or answering statement is not more than \$200,000 (exclusive of interest and costs). The arbitrators will not have jurisdiction, power or authority to consider, or make findings (except in denial of their own jurisdiction) concerning any claim, counter-claims, dispute or other matter in question where the amount in controversy thereof is more than \$200,000 (exclusive of interest and costs) or to render a monetary award in response thereto against any party which totals more than \$200,000 (exclusive of interest and costs).

(d) No arbitration arising out of, or relating to, this agreement may include, by consolidation, joinder or in any other manner, any additional party not a party to this agreement.

(e) By written consent signed by all the parties to this agreement and containing a specific reference hereto, the limitations and restrictions contained in paragraphs (c) and (d) above may be waived in whole or in part as to any claim, counter-claim, dispute or other matter specifically described in such consent. No consent to arbitration in respect of a specifically described claim, counter-claim, dispute or other matter in question will constitute consent to arbitrate any other claim, counter-claim, dispute or other matter in question which is not specifically described in such consent or in which the sum or value in controversy exceeds \$200,000 (exclusive of interest and costs) or which is with any party not specifically described therein.

(f) The award rendered by the arbitrators will be final, not subject to appeal, and judgment may be entered upon it in any court having jurisdiction thereof.

7. PAYMENT

(a) The Engineer may submit monthly or periodic statements requesting payment. Such requests shall be based upon the amount and value of the work and services performed by the Engineer under this agreement, and shall be prepared by the Engineer and supplemented or accompanied by such supporting data as may be required by the Owner.

(b) Upon approval of such payment request by the Owner, payment upon properly certified vouchers shall be made to the Engineer as soon as practicable of ninety percent of the amount as determined above, less all previous payments: Provided, however, that if the Owner determines that the work under this agreement or any specified task hereunder is substantially complete and that the amount of retained percentages is in excess of the

amount considered by him to be adequate for the protection of the Owner, he may at his discretion, release to the Engineer such excess amount.

(c) Upon satisfactory completion by the Engineer of the work called for under the terms of this agreement, and upon acceptance of such work by the Owner, the Engineer will be paid the unpaid balance of any money due for such work, including the retained percentages relating to this portion of the work.

(d) Upon satisfactory completion of the work performed hereunder, and prior to final payment under this agreement for such work, or prior settlement upon termination of the agreement, and as a condition precedent thereto, the Engineer shall execute and deliver to the Owner a release of all claims against the Owner arising under or by virtue of this agreement, other than such claims, if any, as may be specifically exempted by the Engineer from the operation of the release in stated amounts to be set forth therein.

8. PROJECT DESIGN

(a) In the performance of this agreement, the Engineer shall, to the extent practicable, provide for maximum use of structures, machines, products, materials, construction methods, and equipment which are readily available through competitive procurement, or through standard or proven production techniques, methods, and processes, consistent with 40 CFR 35.936-3 and 35.936-13, except to the extent that advanced technology may be utilized pursuant to 40 CFR 35.908.

(b) The Engineer shall not, in the performance of the work called for by this agreement, produce a design or specification such as to require the use of structures, machines, products, materials, construction methods, equipment, or processes which are known by the Engineer to be available only from a sole source, unless such use has been adequately justified in writing by the Engineer as necessary for the minimum needs of the project.

(c) The Engineer shall not, in the performance of the work called for by this agreement, produce a design or specification which would be restrictive in violation of Sec. 204(a) (6) of the Federal Water Pollution Control Act (PL 92-500). This statute requires that no specification for bids or statement of work may be written in such a manner as to contain proprietary, exclusionary, or discriminatory requirements other than those based upon performance, unless such requirements are necessary to test or demonstrate a specific thing, or to provide for necessary interchangeability of parts and equipment, or at least two brand names or trade names of comparable quality or utility are listed and are followed by the words "or equal."

(d) The Engineer shall report to the Owner any sole-source or restrictive design or specification giving the reason or reasons why it is considered necessary to restrict the design or specification.

(e) The Engineer shall not knowingly specify or approve the performance of work at a facility which is in violation of Clean Air or Water standards and which is listed by the Director of the EPA Office of Federal Activities pursuant to 40 CFR Part 15.

9. AUDIT: ACCESS TO RECORDS

(a) The Engineer shall maintain books, records, documents and other evidence directly pertinent to performance on EPA grant work under this agreement in accordance with accepted professional practice, appropriate accounting procedures and practices, and 40 CFR §§ 30.605, 30.805, and 35.935-7. The Engineer shall also maintain the financial information and data used by the Engineer in the preparation or support of the cost submission required pursuant to 40 CFR 35.937-6(b) and a copy of the cost summary submitted to the Owner. The United States Environmental Protection Agency, the Comptroller General of the United States, the United States Department of Labor, Owner, and (the State water pollution control agency) or any of their duly authorized representatives shall have access to such books, records, documents and other evidence for the purpose of inspection, audit and copying. The Engineer will provide proper facilities for such access and inspection.

(b) The Engineer agrees to include paragraphs (a) through (e) of this clause in all his contracts and all tier subcontracts directly related to project performance which are in excess of \$10,000.

(c) Audits conducted pursuant to this provision shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing or audit agency(ies).

(d) The Engineer agrees to the disclosure of all information and reports resulting from access to records pursuant to paragraphs (a) and (b) above, to any of the agencies referred to in paragraph (a) above. Where the audit concerns the Engineer, the auditing agency will afford the Engineer an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report will include the written comments, if any, of the audited parties.

(e) Records under paragraphs (a) and (b) above shall be maintained and made available during performance on EPA grant work under this

agreement and until three years from date of final EPA grant payment for the project. In addition, those records which relate to any "Dispute" appeal under an EPA grant agreement, or litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until three years after the date of resolution of such appeal, litigation, claim or exception.

10. PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA

The provisions of this clause are required by EPA only if the amount of this agreement exceeds \$100,000.00. The Owner may elect to utilize this clause if the contract amount is \$100,000 or less.

(a) If the EPA Project Officer determines that any price, including profit negotiated in connection with this agreement or any cost reimbursable under this agreement was increased by any significant sums because the Engineer, or any subcontractor furnished incomplete or inaccurate cost or pricing data or data not current as certified in his certification of current cost or pricing data (EPA Form 5700-41), then such price of cost or profit shall be reduced accordingly and the agreement shall be modified in writing to reflect such reduction.

(b) Failure to agree on a reduction shall be subject to the "Remedies" clause of this agreement.

(NOTE - Since the agreement is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with certain subcontracts, the Architect-Engineer may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the Architect-Engineer. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by his lower tier subcontractors.)

11. SUBCONTRACTS

(a) Any subcontractors and outside associates or consultants required by the Engineer in connection with the services covered by this agreement will be limited to such individuals or firms as were specifically identified and agreed to during negotiations, or as are specifically approved by the Owner during the performance of this agreement. Any substitution in such subcontractors, associates, or consultants will be subject to the prior approval of the Owner.

(b) Except as otherwise provided in this agreement, the Engineer may not subcontract services in excess of thirty percent (30%) of the contract price to subcontractors or consultants without prior written approval of the Owner.

12. LABOR STANDARDS

To the extent that this agreement involves "construction" (as defined by the Secretary of Labor), the Engineer agrees that such construction work shall be subject to the following labor standards provisions, to the extent applicable:

- (a) Davis-Bacon Act (40 U.S.C. 276a-276a-7);
- (b) Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333);
- (c) Copeland Anti-Kickback Act (18 U.S.C. 874); and

(d) Executive Order 11246 (Equal Employment Opportunity) and implementing rules, regulations, and relevant orders of the Secretary of Labor or EPA; and the Engineer further agrees that this agreement shall include and be subject to the "Labor Standards Provisions for Federally Assisted Construction Contracts" (EPA Form 5720-4) in effect at the time of execution of this agreement.

13. EQUAL EMPLOYMENT OPPORTUNITY

In accordance with EPA policy as expressed in 40 CFR § 30.420-5, the Engineer agrees that he will not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, or national origin.

14. UTILIZATION OF SMALL AND MINORITY BUSINESS

In accordance with EPA policy as expressed in 40 CFR 35.936-7, the Engineer agrees that qualified small business and minority business enterprises shall have the maximum practicable opportunity to participate in the performance of EPA grant-assisted contracts and subcontracts.

15. COVENANT AGAINST CONTINGENT FEES

The Engineer warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bonafide employees. For breach or violation of this warranty, the Owner shall have the right to annul this agreement without liability or in its

discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

16. GRATUITIES

(a) The Owner may, by written notice to the Engineer, terminate the right of the Engineer to proceed under this agreement if it is found, after notice and hearing, by the Owner that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Engineer, or any agent or representative of the Engineer, to any official or employee of the Owner or of EPA with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making or any determinations with respect to the performance of this agreement: Provided, that the existence of the facts upon which the Owner makes such findings shall be in issue and may be reviewed in proceedings pursuant to Clause 6 (Remedies) of this agreement.

(b) In the event this agreement is terminated as provided in paragraph (a) hereof, the Owner shall be entitled (1) to pursue the same remedies against the Engineer as it could pursue in the event of a breach of the contract by the Engineer, and (2) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Owner) which shall be not less than three nor more than ten times the costs incurred by the Engineer in providing any such gratuities to any such officer or employee.

(c) The rights and remedies of the Owner provided in this clause shall not be exclusive and are in addition to any rights and remedies provided by law or under this agreement.

17. PATENTS

If this agreement involves research, developmental, experimental, or demonstration work and any discovery or invention arises or is developed in the course of or under this agreement, such invention or discovery shall be subject to the reporting and rights provisions of Subpart D of 40 CFR Part 30, including Appendix B of said Part 30. In such case, the Engineer shall report the discovery or invention to EPA directly or through the Owner, and shall otherwise comply with the Owner's responsibilities in accordance with Subpart D of 40 CFR Part 30. The Engineer hereby agrees that the disposition of rights to inventions made under this agreement shall be in accordance with the terms and conditions of aforementioned Appendix B. The Engineer shall include provisions appropriate to effectuate the purposes of this condition in all subcontracts involving research, developmental, experimental, or demonstration work.

18. COPYRIGHTS AND RIGHTS IN DATA

(a) The Engineer agrees that any plans, drawings, specifications, computer programs, technical reports, operating manuals, or other "Subject Data" (as defined in Appendix C to 40 CFR Part 30) are subject to the rights in the United States, as set forth in said Appendix C, including the right to use, duplicate and disclose, such manuals, etc., in whole or in part, in any manner for any purpose whatsoever, and have others do so. For purposes of this article, "grantee" as used in said Appendix C shall refer to the Engineer. If the material is copyrightable, the Engineer may copyright such, as permitted by said Appendix C, and subject to the rights in the Government as set forth in Appendix C, but the Owner and the Federal Government reserve a royalty-free, nonexclusive, and irrevocable license to reproduce, publish and use such materials, in whole or in part, and to authorize others to do so. The Engineer shall include provisions appropriate to effectuate the purpose of this condition in all subcontracts expected to produce copyrightable "Subject Data."

(b) All such "Subject Data" furnished by the Engineer pursuant to this agreement are instruments of his services in respect of the project. It is understood that they are not intended or represented to be suitable for reuse on any other project. Any reuse by the Owner without specific written verification or adaptation by the Engineer will be at the risk of the Owner and without liability or legal exposure to Engineer. Any such verification or adaptation will entitle the Engineer to further compensation at rates to be agreed upon by the Owner and the Engineer.